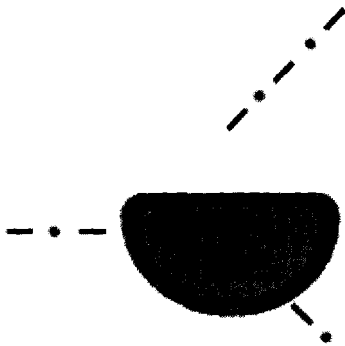
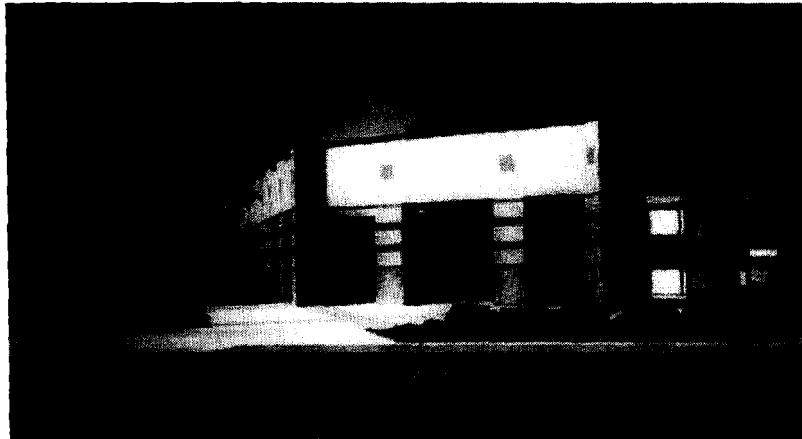


MEANS

EXHIBIT

9

Minnesota Equal Access Network Services, Inc. (MEANS), was formed as a privately owned corporation in 1988 by a group of local independent telephone companies who made a commitment to develop a "telecommunications highway" to bring state-of-the-art telecommunications to greater Minnesota.

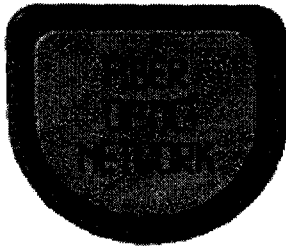


MEANS operates a 1,725-mile fiber optic communications network linking communities throughout the state, including all of the major metropolitan areas. For voice communications, fiber offers greater clarity with less noise. The reliability of fiber, combined with digital signalling, also makes the MEANS network ideal for data and video communications.

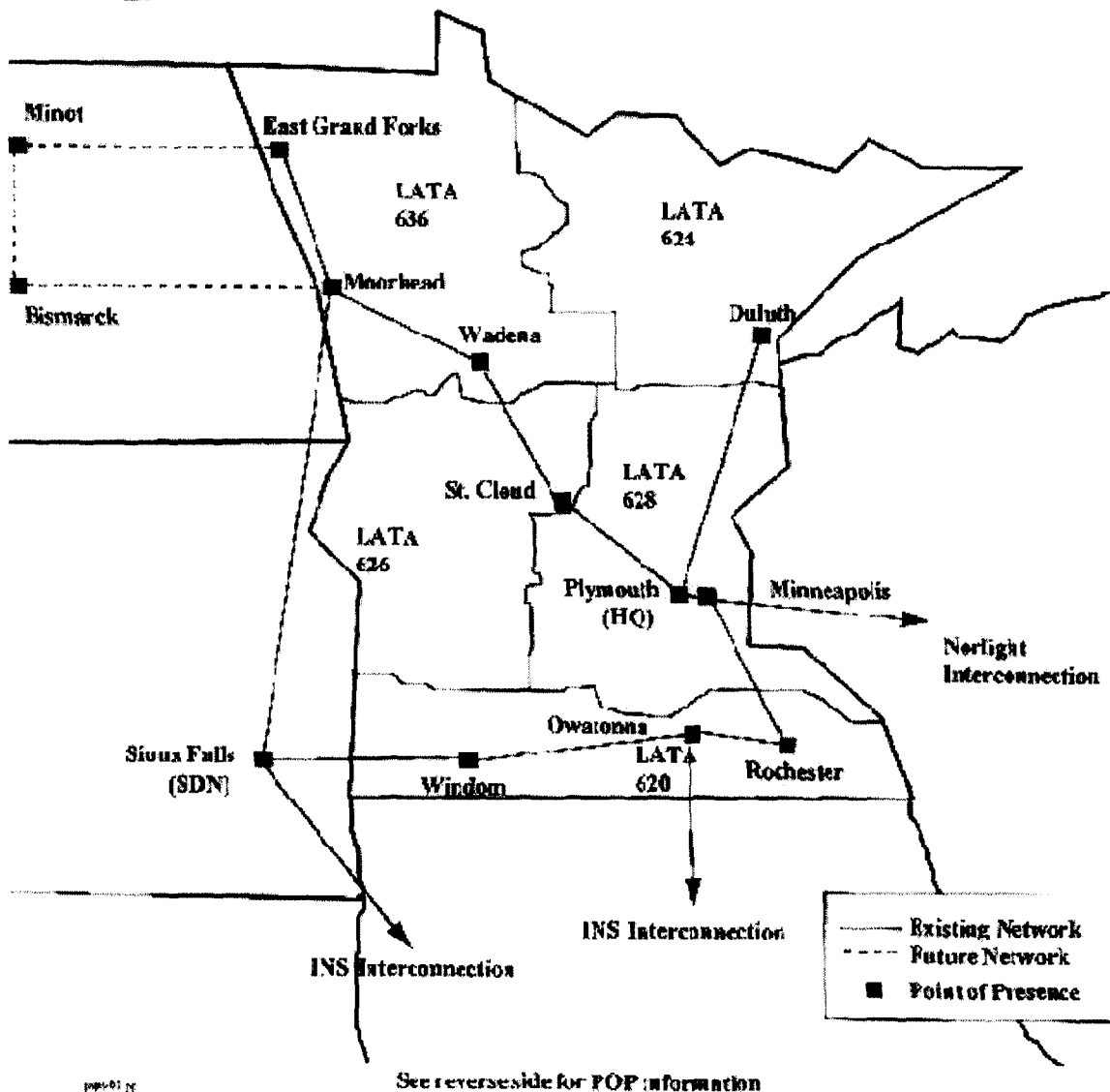
Today, the 65 telcos that MEANS serves represent more than two-thirds of the state's independent local telephone companies.



MEANS



Minnesota Equal Access Network Services, Inc. (MEANS) operates a fully digital fiber optic network utilizing OC-48 S/DMS TransportNode transmission equipment and a DMS-100/200 switching system. The network consists of 11 Points of Presence (POPs) located throughout the states of Minnesota and South Dakota. The network has grown significantly to 1,725 miles, linking communities throughout Minnesota including major metropolitan areas.



It provides diverse connectivity and improved redundancy as a result of its recent expansion to connect with South Dakota Networks (SDN) in Sioux Falls, South Dakota, and Iowa Network Services (INS) in Des Moines, Iowa. In addition, the MEANS network is interconnected with MRC/Norlight, providing access into Wisconsin, Upper Michigan, and Illinois and the Chicago area.

STATISTICS OF COMMUNICATIONS COMMON CARRIERS

EXHIBIT

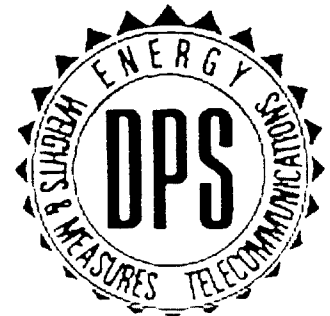
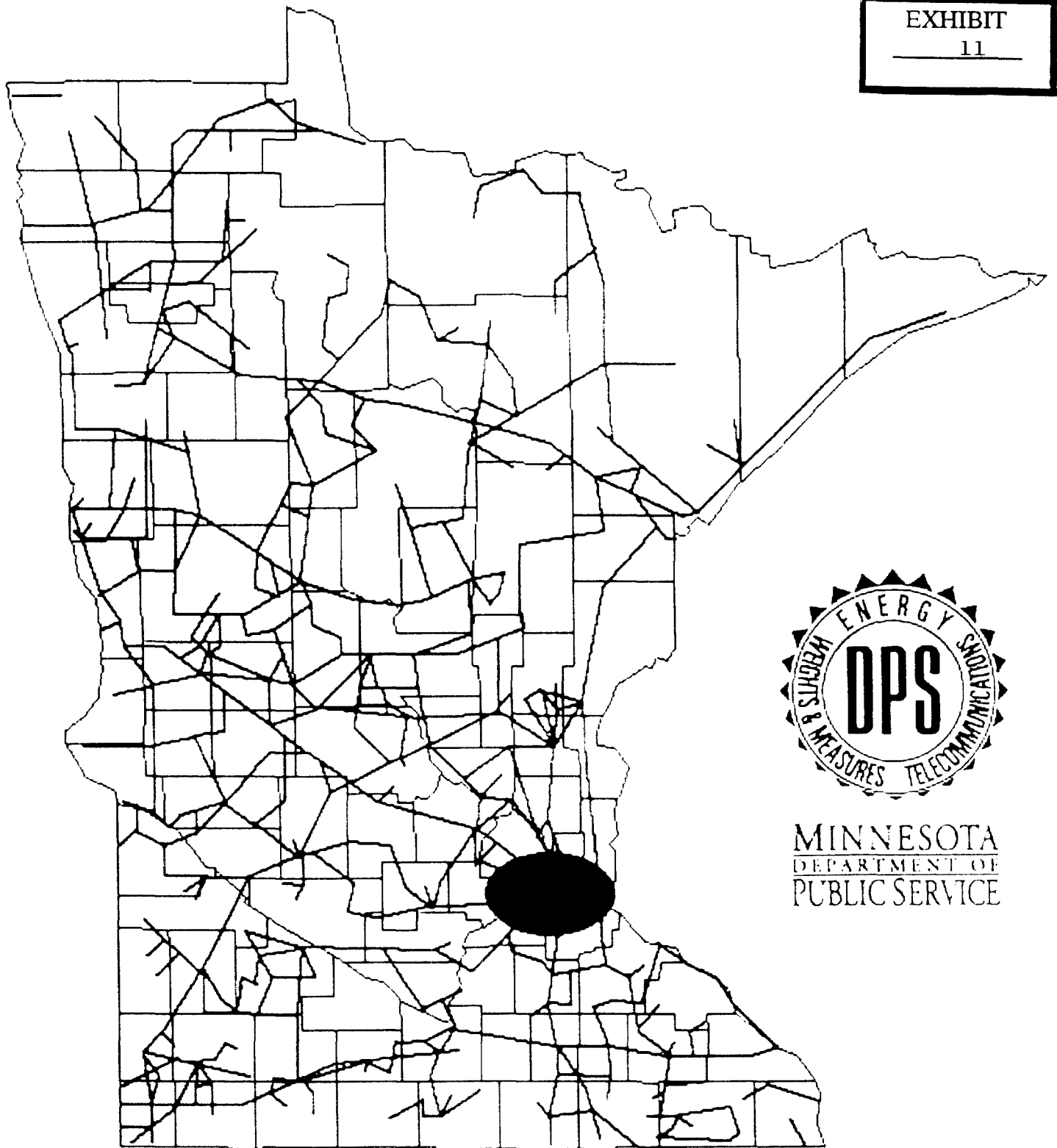
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TABLE 2.2--OUTSIDE PLANT STATISTICS OF REPORTING LOCAL EXCHANGE COMPANIES AS OF DECEMBER 31, 1994--CC

STATE	DEEP SEA CABLE		INTRABUILDING NETWORK CABLE		TOTAL CABLE		KM OF FIBER IN CABLE		
	SHEATH KM OF COPPER	SHEATH KM OF FIBER	SHEATH KM OF COPPER	SHEATH KM OF FIBER	SHEATH KM OF COPPER	SHEATH KM OF FIBER	FIBER KM EQUIPPED (LIT)	TOTAL FIBER KM DEPLOYED (LIT & DARK)	
ALABAMA	0	0	617	2	130,389	7,484	47,160	198,901	AL
ARIZONA	0	0	1,959	19	67,820	4,497	38,057	299,982	AZ
ARKANSAS	0	0	516	5	70,608	3,782	25,618	88,011	AR
CALIFORNIA	0	0	10,577	134	447,153	22,139	273,644	862,303	CA
COLORADO	0	0	2,815	31	100,414	7,540	65,005	800,961	CO
CONNECTICUT	0	0	1,318	45	64,156	4,160	37,505	158,282	CT
DELAWARE	0	0	192	8	15,400	1,423	31,165	51,427	DE
DIST. OF COLUMBIA	0	0	1,650	82	5,016	634	31,302	41,954	DC
FLORIDA	0	0	1,970	29	290,330	24,479	269,388	784,144	FL
GEORGIA	0	0	1,238	14	150,171	14,372	165,167	471,912	GA
HAWAII	0	0	412	6	17,167	455	7,274	14,263	HI
IDAHO	0	0	373	3	45,213	3,030	14,694	158,651	ID
ILLINOIS	0	0	2,958	116	239,418	15,875	96,491	428,405	IL
INDIANA	0	0	2,204	43	167,582	10,471	61,627	228,190	IN
IOWA	0	0	327	8	112,361	8,285	56,252	343,058	IA
KANSAS	0	0	723	11	67,227	5,521	56,860	173,627	KS
KENTUCKY	0	0	584	7	114,361	7,611	53,371	164,698	KY
LOUISIANA	0	0	1,473	8	101,030	6,307	36,755	131,866	LA
MAINE	0	0	589	13	38,678	3,320	31,416	84,678	ME
MARYLAND	0	0	3,066	93	80,109	7,138	253,961	379,473	MD
MASSACHUSETTS	0	0	7,309	285	100,126	8,313	169,384	477,138	MA
MICHIGAN	0	0	5,940	78	253,253	15,024	129,752	665,313	MI
MINNESOTA	0	0	715	40	95,696	7,265	60,206	403,964	MN
MISSISSIPPI	0	0	560	2	99,394	5,583	40,408	118,536	MS
MISSOURI	0	0	1,926	42	186,456	9,096	145,586	306,749	MO
MONTANA	0	0	478	2	29,779	1,934	10,128	81,000	MT
NEBRASKA	0	0	480	11	72,982	7,046	40,221	190,820	NE
NEVADA	0	0	296	5	25,604	1,735	9,345	42,664	NV
NEW HAMPSHIRE	0	0	980	26	33,327	3,630	62,069	137,017	NH
NEW JERSEY	0	0	3,550	154	103,849	12,608	660,373	1,054,809	NJ
NEW MEXICO	0	0	671	24	38,517	3,220	25,380	117,466	NM
NEW YORK	0	0	22,541	749	236,468	20,821	482,066	980,306	NY
NORTH CAROLINA	0	0	2,765	7	218,101	16,201	118,498	340,291	NC
NORTH DAKOTA	0	0	257	3	35,244	4,422	21,235	123,243	ND
OHIO	0	0	6,091	122	235,784	12,036	93,771	374,788	OH
OKLAHOMA	0	0	882	11	102,022	5,349	47,423	179,302	OK
OREGON	0	0	853	21	68,516	4,072	37,628	201,811	OR
PENNSYLVANIA	0	0	3,654	322	215,449	20,396	623,601	852,659	PA
RHODE ISLAND	0	0	890	19	15,195	1,039	33,720	69,958	RI
SOUTH CAROLINA	0	0	1,304	2	82,326	6,930	46,025	155,850	SC
SOUTH DAKOTA	0	0	338	2	36,723	3,771	15,291	98,163	SD
TENNESSEE	0	0	1,040	2	127,648	8,313	66,091	281,578	TN
TEXAS	0	0	9,911	180	458,573	28,181	249,054	1,025,830	TX
UTAH	0	0	977	11	28,837	2,226	16,745	194,458	UT
VERMONT	0	0	451	5	22,429	1,911	18,680	55,102	VT
VIRGINIA	0	0	1,442	71	183,716	17,182	466,619	813,157	VA
WASHINGTON	0	0	2,629	37	114,474	6,024	70,110	389,845	WA
WEST VIRGINIA	0	0	649	8	45,180	3,856	100,384	158,883	WV
WISCONSIN	0	0	1,576	28	121,716	7,298	40,309	132,929	WI
WYOMING	0	0	373	0	22,981	1,750	6,701	71,657	WY
UNITED STATES	0	0	117,089	2,946	5,734,968	405,755	5,559,515	15,960,072	US
PUERTO RICO	0	0	0	0	27,906	1,736	145,861	145,861	PR
OCEAN CABLE	547	719	0	0	547	719	7,702	15,102	OC

Fiber Optic Telecommunication Lines in Minnesota**

EXHIBIT
11

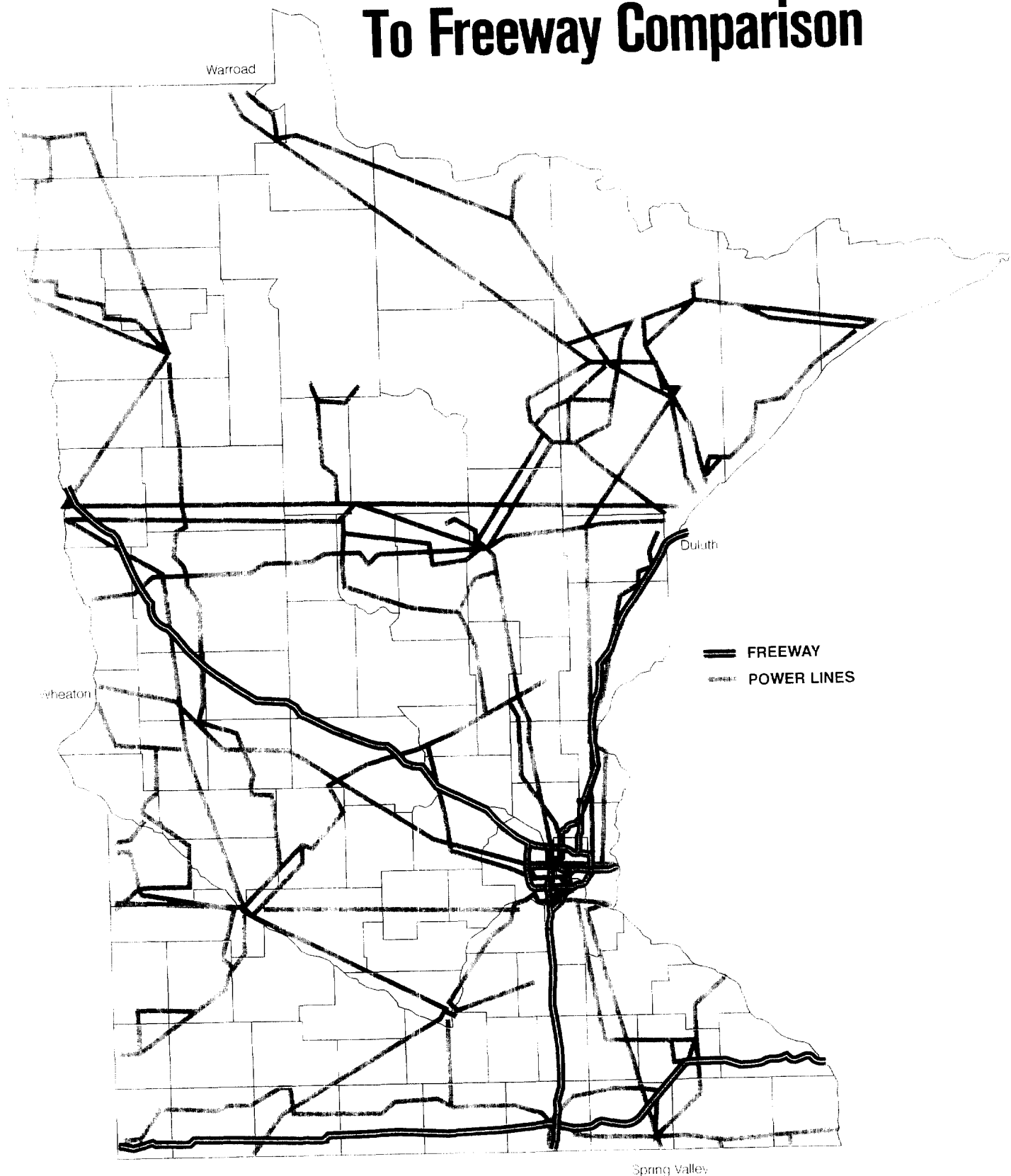


MINNESOTA
DEPARTMENT OF
PUBLIC SERVICE

** Data is from Minnesota local and long distance telephone companies.
Individual company networks are not identified because the information is proprietary.

February 1997

Power Lines To Freeway Comparison



Source: Minnesota Department of Public Service

AGREEMENT TO DEVELOP AND OPERATE
COMMUNICATIONS FACILITIES

DATED

December 23, 1997

BY AND AMONG

THE STATE OF MINNESOTA,

ACTING BY AND THROUGH

THE COMMISSIONER OF THE DEPARTMENT OF TRANSPORTATION
AND THE COMMISSIONER OF THE DEPARTMENT OF ADMINISTRATION

AND

ICS/UCN LLC,

A COLORADO LIMITED LIABILITY COMPANY,

AND

STONE & WEBSTER ENGINEERING CORPORATION,

A MASSACHUSETTS CORPORATION

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EXHIBITS

- A - Network Architecture
- B - Design and Construction Standards
- C - Preliminary Performance Standards
- D - DBE Provisions
- E - Prevailing Wage Provisions
- F - Schedule of Performance and Liquidated Damages
- G - Schedule and Maps for TMC Buildout
- H. Utility Accommodation Policy

THIS AGREEMENT TO DEVELOP AND OPERATE COMMUNICATIONS FACILITIES is made and entered into as of December 23, 1997, among THE STATE OF MINNESOTA ("State"), acting by and through the Commissioner of the Department of Transportation ("MnDOT") and the Commissioner of the Department of Administration ("DOA"), ICS/UCN LLC a Colorado limited liability company ("Company") and STONE & WEBSTER ENGINEERING CORPORATION, a Massachusetts corporation ("S&W").

ARTICLE I RECITALS

Section 1.1 Pursuant to Article 14, Section 2 of the Constitution of the State of Minnesota, the State, acting by and through the authority vested in MnDOT, builds, operates and maintains trunk highways throughout the State for the benefit of the general public.

Section 1.2 The authority of MnDOT to build, operate and maintain trunk highways throughout the State includes the authority under Minnesota Statutes 161.45 (1996) to accommodate utilities within the rights-of-way of trunk highways.

Section 1.3 Historically, MnDOT has granted access permits for perpendicular utility crossings of all types of trunk highways, and access permits for longitudinal utilities only along trunk highways which are not freeways. Such access permits typically are subject to terms and conditions promoting and protecting the health, safety and welfare of users of such highways.

Section 1.4 Historically, MnDOT has prohibited longitudinal access along freeways, consistent with policies and regulations in effect until 1989 of the Federal Highway Administration of the U. S. Department of Transportation ("FHWA") with respect to federal aid highways, with Minnesota Rules, Parts 8810.3300, subpart 4 (allowing access only in area, if any, between control-of-access line and right-of-way line) and with the pre-1989 policies of the American Association of State Highway and Transportation Officials ("AASHTO").

Section 1.5 Because freeways generally operate at greater traveling speeds and higher volumes than other trunk highways, freeways demand different and more stringent design, maintenance and safety measures to protect the users thereof. These design and operational differences include, but are not limited to, fully controlled and less frequent interchanges, grade separations at interchanges, broader clear zones and recovery zones, other design elements to accommodate safe travel at higher speeds, more rigorous and higher cost maintenance schedules, differing traffic control plans, monitoring systems and traffic control methodologies, higher standards for emergency response, and greater restrictions on access to the right-of-way for ancillary purposes such as constructing and servicing utilities. These and other design and operational differences have been the basis and justification for the FHWA, MnDOT and AASHTO policies and regulations restricting the grant of longitudinal access permits for utilities along freeways.

Section 1.6 In 1988 FHWA rescinded its regulations prohibiting longitudinal access along federal aid highways and delegated to the States the responsibility for adopting policies and regulations concerning this matter. Many states continue to prohibit such longitudinal access, although some states, such as the State of Ohio, permit the same subject to terms and conditions and other states, such as the State of Washington, have studied or are studying the feasibility of using such highways for telecommunications facilities.

Section 1.7 Pursuant to FHWA requirements respecting federal aid highways, and in accordance with A Policy on the Accommodation of Utilities within Freeway Rights of Way (1989) published by AASHTO, in 1990 the State adopted its Procedures for Accommodation of Utilities on Highway Right of Way, dated July 27, 1990, Reference: Highway No. 90-1-P-1. Such Procedures continue the State's historic policy of granting access permits for perpendicular utility crossings of all types of trunk highways, and provide for the grant of permits for longitudinal placement of fiber optic cable along freeways subject to particular terms and conditions not generally applicable to perpendicular utility crossings of trunk highways.

Section 1.8 To date the State has not granted any significant permit for longitudinal utility access along freeways, except for permits it granted for the laying of fiber optic cable pursuant to a special State statute enacted by Act of April 20, 1990, Ch. 426, H.F. No 1857, sec. 7 (the "Special Statute"), which states:

"Notwithstanding Minnesota Rules 1989, part 8810.3300, subpart 4, a Utility, as defined in Minnesota Rules 1989, part 8810.3100, subpart 4, may lay a fiber optic cable or a conduit containing one or more fiber optic cables inside the control-of-access lines along the portion of the interstate highway designated as I-94 that runs between Maple Grove in Hennepin County and St. Cloud in Stearns County, and the portion of the interstate highway designated as I-494 that runs between Plymouth in Hennepin County and Maple Grove in Hennepin County;"

Section 1.9 Based on its experience under the Special Statute and experiences of other state departments of transportation, the State finds that under strictly controlled procedures the grant of access permits for a single or very limited number of installations of fiber optic cable and related facilities within the control of access lines of freeways throughout the State can be accomplished consistent with public health, safety and welfare, but that the grant of such permits to multiple parties will create undue risk to public health, safety and welfare, undue cost of monitoring, administration and maintenance to the State, undue risk of interference with the free flow of traffic, and undue delays and increases in costs to State to widen, relocate or otherwise alter or improve freeways.

Section 1.10 Consistent with such finding and pursuant to MnDOT's authority, the State issued in February 1996 its Request For Proposal for Public-Private Partnership in the Development of Communications Infrastructure, together with all Exhibits, attachments, addenda and amendments thereto (collectively the "RFP"), under which the State sought proposals for the placement of either or both of a fiber optic network and wireless communications facilities longitudinally within the right of way of State trunk highways, including freeways, in exchange for communications services for the State and other governmental entities.

Section 1.11 In response to the RFP, one or more entities submitted proposals for the design, construction, maintenance, repair and operation of a fiber optic network and/or wireless communications facilities.

Section 1.12 On April 26, 1996, Company's member, International Communication Services, Inc. ("ICS"), as part of a team, responded to the RFP by submitting an initial proposal.

Section 1.13 On June 7, 1996, ICS informed MnDOT that the team had been restructured to consist of ICS and S&W. MnDOT accepted the restructuring; and thereafter ICS and S&W made a timely oral presentation of their proposal and qualifications to MnDOT as part of MnDOT's procedures for evaluating responses to the RFP.

Section 1.14 On August 14, 1996, the State selected ICS and S&W for the further negotiation of their proposal and the negotiation of a development agreement. The State made this selection based upon the selection criteria set forth in the RFP and its evaluation that the proposal of ICS and S&W was significantly more advantageous to the State than any other proposal received in response to the RFP.

Section 1.15 The State has negotiated the proposal and this Agreement pursuant to MnDOT's express reservation of all rights available to it by law in administering the RFP, including but not limited to the right to negotiate with a proposer without being bound by any provision in its proposal. The State finds that the terms and conditions as finally negotiated pursuant to such reservation of rights, and as set forth in this Agreement, are within the scope of the RFP and remain significantly more advantageous to the State than those in any other proposal received in response to the RFP.

Section 1.16 MnDOT selected the proposal of ICS and S&W and MnDOT and DOA have approved this Agreement based on an evaluation that such proposal and this Agreement will best serve the interests of the State in: (1) developing emerging intelligent transportation systems technology to improve efficiency, productivity and safe operation of trunk highways; and (2) enhancing and expanding the State's ability to secure affordable and reliable voice communications, data and video transport and other information transmission functions of importance to the smooth and efficient operation of State and other governmental agencies at disparate locations within the State, including but not limited to communications between and among MnDOT regional offices and operation of MnDOT's Traffic Management Center.

Section 1.17 In addition to serving the primary public purposes described above, the State desires to serve the public purpose of increasing the fiber optic network available to the general public and increasing competition within the State for the transport of information by means of fiber optic cable, consistent with MnDOT's duty of protecting the health, safety and welfare of the public traveling on trunk highways.

Section 1.18 In 1996 the United States enacted the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 70, Feb. 8, 1996). A primary purpose of such Act is to increase competition for the provision of telecommunications service by, among other things, removing barriers to entry into the business of providing telecommunications service.

Section 1.19 Section 253 of such Act provides in part as follows:

“(a) No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

“(c) Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”

Section 1.20 The State's selection of the proposal of ICS and S&W will promote the primary purpose of such Act and comply with Section 253 thereof because: (1) the State has selected such proposal as the result of a competitively neutral and nondiscriminatory RFP process; (2) the fiber optic network to be installed and operated will increase the fiber optic network available to the general public and increase competition within the State for the transport of information by means of fiber optic cable; (3) the limit under this Agreement on the State's right to authorize other fiber optic cable longitudinally along certain freeways is within the State's retained authority under such Act to manage trunk highways to preserve and protect the health, safety and welfare of the traveling public; (4) the fiber optic network Company and S&W will install will have ample capacity to meet foreseeable increasing demand for information transport; (5) if such fiber optic network has insufficient capacity to meet foreseeable demand after ten years of operations, the State has the right under this Agreement to authorize others to install additional fiber optic cable; (6) the Company is offering to other industry participants, including potential competitors, the opportunity to install fiber concurrently with Company's installation of its fiber optic network and the opportunity to obtain participatory interests in Company; and (7) the Company will make use of its fiber optic network available to similarly

Section 1.10 Consistent with such finding and pursuant to MnDOT's authority, the State issued in February 1996 its Request For Proposal for Public-Private Partnership in the Development of Communications Infrastructure, together with all Exhibits, attachments, addenda and amendments thereto (collectively the "RFP"), under which the State sought proposals for the placement of either or both of a fiber optic network and wireless communications facilities longitudinally within the right of way of State trunk highways, including freeways, in exchange for communications services for the State and other governmental entities.

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Section 1.13 On June 7, 1996, ICS informed MnDOT that the team had been restructured to consist of ICS and S&W. MnDOT accepted the restructuring; and thereafter ICS and S&W made a timely oral presentation of their proposal and qualifications to MnDOT as part of MnDOT's procedures for evaluating responses to the RFP.

Section 1.14 On August 14, 1996, the State selected ICS and S&W for the further negotiation of their proposal and the negotiation of a development agreement. The State made this selection based upon the selection criteria set forth in the RFP and its evaluation that the proposal of ICS and S&W was significantly more advantageous to the State than any other proposal received in response to the RFP.

Section 1.15 The State has negotiated the proposal and this Agreement pursuant to MnDOT's express reservation of all rights available to it by law in administering the RFP, including but not limited to the right to negotiate with a proposer without being bound by any provision in its proposal. The State finds that the terms and conditions as finally negotiated pursuant to such reservation of rights, and as set forth in this Agreement, are within the scope of the RFP and remain significantly more advantageous to the State than those in any other proposal received in response to the RFP.

Section 1.16 MnDOT selected the proposal of ICS and S&W and MnDOT and DOA have approved this Agreement based on an evaluation that such proposal and this Agreement will best serve the interests of the State in: (1) developing emerging intelligent transportation systems technology to improve efficiency, productivity and safe operation of trunk highways; and (2) enhancing and expanding the State's ability to secure affordable and reliable voice communications, data and video transport and other information transmission functions of importance to the smooth and efficient operation of State and other governmental agencies at disparate locations within the State, including but not limited to communications between and among MnDOT regional offices and operation of MnDOT's Traffic Management Center.

Section 1.17 In addition to serving the primary public purposes described above, the State desires to serve the public purpose of increasing the fiber optic network available to the general public and increasing competition within the State for the transport of information by means of fiber optic cable, consistent with MnDOT's duty of protecting the health, safety and welfare of the public traveling on trunk highways.

Section 1.18 In 1996 the United States enacted the Telecommunications Act of 1996, P. L. 104-104, 110 Stat. 70, Feb. 8, 1996) A primary purpose of such Act is to increase competition for the provision of telecommunications service by, among other things, removing barriers to entry into the business of providing telecommunications service.

Section 1.19 Section 253 of such Act provides in part as follows:

“(a) No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

“(c) Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”

Section 1.20 The State's selection of the proposal of ICS and S&W will promote the primary purpose of such Act and comply with Section 253 thereof because: (1) the State has selected such proposal as the result of a competitively neutral and nondiscriminatory RFP process; (2) the fiber optic network to be installed and operated will increase the fiber optic network available to the general public and increase competition within the State for the transport of information by means of fiber optic cable; (3) the limit under this Agreement on the State's right to authorize other fiber optic cable longitudinally along certain freeways is within the State's retained authority under such Act to manage trunk highways to preserve and protect the health, safety and welfare of the traveling public; (4) the fiber optic network Company and S&W will install will have ample capacity to meet foreseeable increasing demand for information transport; (5) if such fiber optic network has insufficient capacity to meet foreseeable demand after ten years of operations, the State has the right under this Agreement to authorize others to install additional fiber optic cable; (6) the Company is offering to other industry participants, including potential competitors, the opportunity to install fiber concurrently with Company's installation of its fiber optic network and the opportunity to obtain participatory interests in Company; and (7) the Company will make use of its fiber optic network available to similarly

situated parties on a uniform and nondiscriminatory basis, including uniform rates and charges, as more particularly provided in this Agreement.

Section 1.21 In consideration of the benefits afforded by State to Company in this Agreement, Company is undertaking significant financial and economic obligations and risk in connection with the construction, ownership, management and operation of the Network.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the State, Company and S&W agree as follows:

ARTICLE III GRANT OF RIGHTS; OBLIGATIONS; TERMS OF BARTER

Section 3.1 Grant of Rights to Develop Network; Term.

(a) Subject to the limitations and conditions set forth in subsections (b) and (c) below and otherwise in this Agreement, State hereby grants to Company and S&W the right and opportunity to design, finance, construct, install, own, operate, use, administer, maintain and replace the Network, to construct, install, use, administer, maintain and replace the fiber optic cable and equipment of Collocating Customers and to enter into User Agreements respecting the Network and/or Collocating Customers.

(b) The exercise of Company's and S&W's right granted in subsection (a) above to construct, install, operate, use, administer, maintain and replace is limited and conditioned by, among other provisions set forth in this Agreement, the following:

(i) Company's and S&W's compliance with any restrictions or requirements MnDOT reasonably applies at the time any such right is exercisable and exercised in order to protect or promote the safety and operation of Right of Way in which the Network is located or the safety and convenience of the traveling public;

(ii) the nature and condition of MnDOT's title to Right of Way in which the Network is located, as it may change from time to time, including but not limited to rights held by others to possess, control and utilize the same to the extent permitted by Laws and Regulations or any agreement, easement, franchise or other title instrument, with the benefit, however, of Sections 11.1 and 14.1(c);

(iii) the paramount right of MnDOT to possess, control and utilize Right of Way as permitted by Laws and Regulations, including but not limited to the right to grant Permits to others pursuant to the Utility Accommodation Policy, with the benefit, however, of Sections 11.1 and 14.1(c) and the provisions on relocation set forth in Section 11.2;

(iv) the satisfaction of any requirements applicable under MEPA, NEPA or either of them and the receipt of and compliance with the terms and provisions of all Regulatory Approvals necessary for the exercise of such right;

(v) Company's satisfaction of the conditions precedent to construction set forth in Section 5.5, as to Phase 1 of the Network, and Section 5.6, as to any Construction Segment in Phase 2 of the Network;

(vi) Company's and S&W's compliance in all material respects with this Agreement and the Laws and Regulations; and

(vii) Company shall have the right to use the Right of Way only and solely for the purpose of constructing, installing, owning, operating, administering, maintaining and

replacing the Network and constructing, installing, administering, maintaining and replacing the fiber optic cable and equipment of Collocating Customers, and shall have the right to use the Network only and solely for the purpose of providing to State and to telecommunications service providers, including Company Related Parties, transport capacity, via lit or dark fibers and ancillary services for voice, video and data transport and transmission intrastate and interstate.

(viii) Unless State otherwise agrees in writing in its sole discretion, Company shall not acquire or exchange fiber strands on Collocating Customer facilities and shall not purchase, resell or use the lit or dark capacity of Collocating Customer facilities until after all lit and dark capacity of the Network is fully utilized.

(ix) A Company Related Party shall have the right to purchase, resell or use fiber strands on Collocating Customer facilities or the lit capacity of Collocating Customer facilities (1) only after all lit and dark capacity of the Network is fully utilized or (2) before all lit and dark capacity of the Network is fully utilized, only on the following terms and conditions:

(A) Company shall first submit to State reasonably detailed information on the proposed arrangements for purchase, resale and use, including but not limited to the identity of the Company Related Party, the nature of the relation or affiliation, the purpose, type, scope and duration of the proposed use, the purchase and resale arrangements, if any, the architecture, design and other technical information concerning the fiber optic cable and equipment to be purchased or used and any other information State reasonably requests;

(B) State and Company shall thereafter meet and confer with respect to the proposed purchase, resale or use and its purposes; and

(C) the proposed purchase, resale or use shall be subject to State's prior written approval, in its good faith discretion, based on its evaluation of whether the proposed purchase, resale or use may have the purpose or effect of circumventing the State's right under Section 3.3(b) or (i) to share in future lit capacity of the Network. In making such evaluation, State shall consider such factors as the economic and technical practicability of providing the lit capacity on the Network, the nature and extent of the relation or affiliation with Company, the nature of the Company Related Party's business, timing, reasons and justifications for the purchase, resale or use of Collocating Customer facilities or capacity in lieu of the Network, suitability of the Network for the proposed use, comparative reliability, comparative fiber quality and the like; and

(D) State's decision shall be subject to review by the court in accordance with Section 16.7.

(c) Company's and S&W's rights under this Agreement shall terminate at the expiration or earlier termination of the Term, as more particularly set forth in this Agreement.

Section 3.2 Obligations to Develop Network and Provide Services.

(a) Prior to Commencement of Construction of Phase 1, Company and S&W shall have no obligation to construct or operate the Network or to provide to State the services set forth in Section 3.3. However, Company and S&W shall be obligated to use good faith and diligent efforts to satisfy, within the relevant times set forth in the Schedule of Performance (as the same may be extended pursuant to this Agreement), all conditions precedent to their right to commence construction of Phase 1 as set forth in Section 5.5; and State shall have the right to terminate this Agreement and Company's and S&W's rights hereunder if Company or S&W do not meet any pre-construction milestone set forth in the Schedule of Performance (as the same may be extended pursuant to this Agreement).

(b) Subject to the terms and conditions of this Agreement, upon Commencement of Construction of Phase 1 or any Construction Segment thereof, Company and S&W shall be obligated to construct and complete the entirety of Phase 1 and to provide to State the capacity, services and other consideration set forth in Sections 3.3 (except Section 3.3(i)).

(c) Subject to the terms and conditions of this Agreement, upon Commencement of Construction of any Construction Segment of Phase 2, Company shall be obligated to construct and complete such Construction Segment and to provide to State the capacity, services and other consideration set forth in Section 3.3(i) respecting such Construction Segment.

(d) Company shall provide or cause to be provided all operation, administration, maintenance, repair and replacement services for the Network throughout the Term, in accordance with and subject to the standards, terms and conditions set forth in this Agreement.

(e) The totality of S&W's obligations owing to State in connection with the Network are limited to those set forth in this Agreement and the S&W Guaranty.

(f) After all notices of Acceptance are issued for Phase 1, State shall have no further obligation to deliver to S&W any notices, documents, materials or information which State would otherwise be required to deliver pursuant to this Agreement, except with respect to any continuing obligations of S&W described in subsection (e) above.

Section 3.3 Network Capacity and Services to be Provided to State. In exchange for the rights granted to Company and S&W in Section 3.1 and elsewhere in this Agreement, Company (and S&W, but only to the extent of the services of S&W expressly provided in this Section) shall provide to State, without any charge, cost or expense whatsoever to State except as expressly provided in this Section, the capacity and services set forth in this Section.

(a) Initial Lit Capacity.

(i) Company shall create and continue to provide from and after the first Cutover Date for Phase 1 and thereafter throughout the Term, as part of Phase 1 of the Network, the amount of lit capacity described in Exhibit A attached to this Agreement.

(ii) An average of 20% of such lit capacity and up to 30% of lit capacity on any particular portion of Phase 1 of the Network shall at all times be available to State.

(iii) The State's share of such lit capacity shall at all times be provided through a single terminating Equipment at each of the 13 MNet hubs (including the disaster recovery hub) described and delineated on Exhibit A and the 17 MnDOT regional offices described and delineated on Exhibit A. The terminating Equipment shall be capable of supporting DS1, DS3, OC3, OC3c, OC12 or OC12c interfaces as necessary to meet the State's needs. Company shall deliver such lit capacity at standard cross-connect Equipment points (e.g. DSX1, DSX3 or OCn) at each such site to interface with State-provided equipment or State-procured local and inter-exchange carrier facilities.

(b) Future Lit Capacity.

(i) Within 30 Days after any date that Company adds lit capacity to Phase 1 of the Network or any Node or Nodes thereof in addition to that to be created pursuant to subsection (a)(i) above, Company shall notify State in writing of such action. From and after the date such additional lit capacity is placed in service, throughout the balance of the Term, State shall have the irrevocable and exclusive right to an average of 20% of such additional lit capacity and up to 30% of such additional lit capacity on any particular ring of Phase 1 of the Network.

(ii) State's right to its share of additional lit capacity includes capacity created by virtue of placing additional fiber strands in service, by virtue of increasing the capacity of Equipment already serving lit fiber strands on the Network or by virtue of technology upgrades. In either case, Company shall deliver State's share of the additional lit capacity via the existing rings connecting the MnDOT and MNet sites and via existing or upgraded terminating equipment at the MnDOT and MNet sites which support the interfaces identified in subsection (a)(iii) above; provided that State may elect to utilize its share of such additional lit capacity at or through any other Nodes or terminating points (such as but not limited to the locations described in subsection (f) below).

(iii) In order to protect and preserve State's right to future lit capacity under this subsection (b), Company shall not at any time sell, lease, license or otherwise transfer as dark fiber more than 80% of the remaining fibers in any ring of Phase 1 of the Network, unless State in its sole discretion approves an alternate means to assure to State acceptable quantities of future lit capacity by electronic upgrades to existing lit fiber. For this purpose, "remaining fibers" means the total number of fibers in the ring (excluding any added pursuant to Section

5.1(e)(ii)) minus (A) the strands to be lit as part of the initial lit capacity and (B) the ten dark strands reserved for the State under subsection (c) below.

(c) Dark Fibers. In addition to all lit capacity, Company shall deliver to State on each Cutover Date respecting Phase 1 a total of ten dark fiber strands on each ring and at all locations throughout Phase 1 of the Network. In those locations of the Network where rings converge or intersect, State shall receive a number of dark fiber strands equal to the number of the converged or intersecting rings times ten. State shall have the exclusive ownership, control and use of ten dark fiber strands on each ring for all the purposes set forth in Section 3.4 throughout the balance of the Term. Company shall make the dark fiber strands accessible to connect to State-provided equipment located in Network huts and pedestals and at the 13 MNet and 17 MnDOT sites set forth in Exhibit A. Dark fiber provided hereunder shall not be included in the computation of capacity for purposes of subsections (a) and (b) above.

(d) Right to Procure Additional Capacity. If at any time during the Term State desires to add capacity to the share of capacity of Phase 1 of the Network to which the State is then entitled under subsections (a), (b) and (c) above, then the following terms and conditions shall apply.

(i) State shall deliver to Company written notice setting forth in reasonable detail the additional capacity desired, whether it is desired as lit capacity or as dark fibers, the location or locations thereof and other necessary technical information.

(ii) If State has requested dark fibers, Company shall, within 15 Days after receiving the written notice, deliver to State a written notice stating whether the dark fiber desired is available and, if so, Company's then existing most favored customer rates and charges for dark fibers on such locations of the Network.

(iii) If State has requested lit capacity, Company shall within 15 Days after receiving the written notice, deliver to State a written notice stating whether it is offering or providing lit capacity to customers and, if so, Company's then-existing most favored customer rates and charges for lit capacity on such locations of the Network, and Company's schedule for procuring and installing the necessary Equipment and any other improvements for creating such additional lit capacity and for conducting and completing tests thereof.

(iv) To the maximum extent permitted by law, State shall have the right to the requested additional capacity at the following rates and charges:

(A) for additional lit capacity up to an amount equal to State's share of initial lit capacity under subsection (a) above and for additional dark fiber strands up to State's number of dark fiber strands under subsection (c) above, at 80% of the Company's most favored customers rates and charges; and

(B) for additional lit or dark capacity beyond the foregoing respective amounts, at 80% of the Company's rates and charges for similarly situated customers.